

BEFORE THE BOARD OF MILK CONTROL
DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 32.23.101,) AMMENDMENT
32.23.102, 32.23.201, 32.23.301,)
Pertaining to definitions,) NO HEARING
verbiage pertaining to purchase) CONTEMPLATED
and sales, trade practices and)
licensee assessments and the
proposed amendment of ARM
32.24.301, 32.24.506
pertaining to timing
of the price announcements and
the producer committee

TO: All Concerned Persons

1. On September 14, 2009, the Milk Control Board proposes to amend ARM 32.23.101, ARM 32.23.102, ARM 32.23.201 and ARM 32.23.301 pertaining to definitions, clarifying verbiage pertaining to the purchase and resale of milk, regulation of trade practices and licensee assessments.

2. The rule proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

32.23.101 DEFINITIONS

(1) As used in this chapter, unless the context otherwise requires, the following definitions shall apply:

(a) "Act" or "Milk Control Act" means the milk control laws contained in Title 81, chapter 23, MCA.

(b) "Other source milk" means all milk as defined in the ~~aet~~ Act, and also all reconstituted or recombined milk which is received in a plant from any source other than a producer licensed under the Milk Control Act.

(c) "Plant receipts" means all milk received from producers, other plants, and other sources, inventory, and all additives used in fluid products.

(d) "Excess milk" means the amount of milk delivered to a plant by a producer in excess of his/her specified quota.

(e) "Skim milk dumped" means that amount of skim milk dumped or otherwise destroyed after separation and without further processing or usage.

(f) "Shrinkage" means that amount by which milk receipts exceed milk otherwise accounted for.

(g) "Overage" means that amount by which milk accounted for exceeds plant receipts.

(h) "Surplus" means ~~that amount of milk produced that exceeds the class I and II needs of the market.~~ all raw milk under contract to a pool handler that is over and above the pool handler's class I and II market needs, as defined in 81-23-101 (1)(g), but excludes cream and fat products which are derived from processing.

(i) "Plant" means the processing plant of a distributor.

(j) "Hauler" means an independent ~~businessman~~ **business person** who owns his/**her** own trucking equipment and who contracts directly with the producers for hauling their milk from farm to plant. A "distributor or plant hauler" means a processing plant which provides trucking equipment to haul producer milk from farm to plant.

(k) "Jobber" means any independent ~~businessman~~ **business person** other than a store, wholesale grocery purchasing organization, or wholesale grocery broker, who has no financial connection with any distributor other than acquiring the distributor's packaged product and distributing and selling the same, and whose business practices and policies are within his/**her** exclusive province to establish, and not subject to any influence or control from the distributor.

(l) "Import jobber" means a distributor who purchases milk already processed and packaged for resale to wholesale and retail customers from a source or sources whose headquarters are geographically located outside the boundaries of Montana.

(m) "Department" means the department of livestock.

(n) "Board" means the board of milk control.

(o) "Bureau" means the milk control bureau of the department.

History: Sec. [81-23-103](#), [81-23-402](#) MCA; [IMP](#) , Sec. [81-23-103](#), [81-23-402](#) MCA; Eff. 2/5/76; [AMD](#) , Eff. 4/5/76; [AMD](#) , 1977 MAR p. 945, Eff. 11/14/77; [AMD](#) , 1982 MAR p. 1478, Eff. 7/30/82; [AMD](#) , 1982 MAR p. 1741, Eff. 10/1/82; [AMD](#) , 1983 MAR p. 1817, Eff. 12/16/83; [AMD](#) , 1984 MAR p. 969, Eff. 6/29/84; [AMD](#) , 1986 MAR p. 1183, Eff. 7/18/86; [AMD](#) , 1993 MAR p. 3016, Eff. 12/24/93; [AMD](#) , 1996 MAR p. 455, Eff. 2/9/96; [TRANS](#) , from Commerce, 1996 MAR p. 456.

Effective rule versions existed in ARM on or after March 31, 2007

MAR Notices	Effective From	Effective To	History Notes
	2/9/1996	Current	History: Sec. 81-23-103 , 81-23-402 MCA; IMP , Sec. 81-23-103 , 81-23-402 MCA; Eff. 2/5/76; AMD , Eff. 4/5/76; AMD , 1977 MAR p. 945, Eff. 11/14/77;

			<p><u>AMD</u> , 1982 MAR p. 1478, Eff. 7/30/82; <u>AMD</u> , 1982 MAR p. 1741, Eff. 10/1/82; <u>AMD</u> , 1983 MAR p. 1817, Eff. 12/16/83; <u>AMD</u> , 1984 MAR p. 969, Eff. 6/29/84; <u>AMD</u> , 1986 MAR p. 1183, Eff. 7/18/86; <u>AMD</u> , 1993 MAR p. 3016, Eff. 12/24/93; <u>AMD</u> , 1996 MAR p. 455, Eff. 2/9/96; <u>TRANS</u> , from Commerce, 1996 MAR p. 456.</p>
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32.23.102 TRANSACTIONS INVOLVING THE PURCHASE AND RESALE OF MILK WITHIN THE STATE

(1) As an aid to the efficient collection of license fees and assessments, each distributor who purchases milk from producers shall deduct from payments due such producers any license fees and administrative assessments due the department from such producers under [81-23-202](#) and [81-23-105](#), MCA. The distributor shall transmit such fees and assessments to the department together with a statement of individual producer assessment payments. Assessments under [81-23-202](#), MCA, shall be reported and paid at least quarterly, as provided in that section. Assessments under [81-23-105](#), MCA, and ARM [32.23.302](#) shall be separately reported and paid monthly.

(2) Deductions of any kind (other than assessments that are required under [81-23-105](#) and [81-23-202](#), MCA, and license fees) from payments due producers may be made ONLY UPON WRITTEN AUTHORIZATION from producers, or, in the case of cooperatives, upon formal resolution of the directors at a regular business meeting. A copy of such authorization shall be retained by the distributor as part of its permanent records for its own protection.

(3) When producer payments are based upon butterfat tests from composite samples, a portion of each composite sample must be retained until the succeeding composite sample is tested.

(4) Each distributor must maintain a record of butterfat tests of each producer's milk ~~or cream~~ covering each pay period and provide each producer with each butterfat test result made for that producer as provided in (7) of this rule. Such record shall be kept on file for two years and be made available to any authorized agent of the ~~department~~ **Bureau** upon request.

(5) On or before the ~~tenth~~ 26th day of each month, the ~~bureau~~ **Bureau** will ~~publish~~ **publish** post for public inspection in the main office of the department an original **a** notice of the ~~class~~ **Class** I, II and III prices to be paid producers for grade **Grade** A milk by distributors during the next calendar month. In addition thereto and on the same day, the ~~bureau~~ **Bureau** will cause a correct copy of the ~~published~~ **published** posted notice to be mailed to each distributor, producer-distributor, and producer licensed under the Act. The notices must contain not only statements of the correct prices to

be paid, but statements of the applicable Chicago area average prices relied upon, and the mathematical computations by which Montana prices were arrived at.

(6) For the purpose of determining the audit value of producer milk delivered to a plant under [81-23-302](#), MCA, all butterfat and skim milk received from producers shall be considered as utilized by the plant in either class **Class** I, II or III as indicated by plant processing and sales records. Skim milk dumped or allocated to allowable shrinkage shall be considered as utilized in class **Class** III for pricing purposes.

(7) Distributors purchasing milk ~~or cream~~ from producers shall render to producers not later than the 15th day of each month, statements showing each of the following items **for the prior calendar month**:

- (a) name and address of distributor issuing statement,
- (b) date of statement,
- (c) period for which statement is rendered,
- (d) name of producer for whom the statement is intended,
- (e) producer butterfat tests for the first half of the month or other test period,
- (f) producer butterfat tests for the last half of the month or other test period,
- (g) the weighted average butterfat test of the producer for the month for which the statement is rendered,
- (h) percentage of milk or skim milk and fat utilized in each classification, or, in the alternative, pounds of milk or skim milk and fat utilized in each classification,
- (i) rate paid for milk at test for each classification as established by applicable rule,
- (j) total pounds of milk purchased from producer,
- (k) amounts paid as premiums, bonuses, etc.,
- (l) gross amounts paid after addition of premiums etc.,
- (m) itemization of advance payments and authorized deductions,
- (n) total deductions, and
- (o) net amount due and paid.

(8) On or before the eighth business day after the end of each month, in detail and on forms supplied by the **Bureau** department, each distributor must submit to the department **Bureau** a report of the information required by ARM [32.23.512](#) [32.24.512](#), and a report of:

(a) out-of-state sales (packaged and bulk) ; and

(b) information of what producers, to the distributor's knowledge, have gone out of business during the preceding month.

(9) On or before the 15th day of each month, each distributor must submit to the **Bureau** department a duplicate or other correct copy of its producer payroll for the preceding month, indicating total producer deliveries and payment for the preceding month for each producer supplying the plant.

(10) Each distributor whose place of business is outside the state of Montana, but who comes under the jurisdiction of the Milk Control Act, and of this rule by virtue of his distributing milk within the state, either in bulk or packaged form, must file with the **Bureau** department on forms supplied by the **Bureau** department, on or before the 15th day of each month, a report of sales of such milk during the preceding month.

(a) Each import jobber who purchases milk from sources outside the state of Montana for resale in Montana must file with the **Bureau** department, on forms supplied by the **Bureau** department, on or before the 15th day of each month, a report of sales of such milk during the preceding month.

(b) Each producer-distributor shall file with the **Bureau** department, on forms supplied by the **Bureau** department, on or before the 15th day of each month, a report of his ~~class~~ **Class** I sales and disposition of production in excess of ~~class~~ **Class** I sales during the preceding month.

(11) The **Bureau** department shall cause periodic audits of the books and records of distributors to be made to verify the utilization of all milk reported pursuant to ARM [32.24.512](#), thereby establishing payment or nonpayment of producer prices fixed by rules of the board.

(a) Overpayments made by distributors not offset against underpayments or otherwise collected by the distributors within ninety days after final settlement of the audit of the period during which the overpayment was determined will not be credited to the distributor in any subsequent audits.

(b) Upon completion of each audit, the distributor will be furnished with an audit summary and commentary with respect to audit results and with indicated producer adjustments, if any, for each month audited. All underpayment settlements must be

paid to producers on or before the next regular pay date and proof of such settlement payments must be filed with the Bureau department by the distributor forthwith.

(c) At any time a distributor is unwilling or unable to reconcile the audit results with rules of the ~~board~~ Board and/or ~~department~~ Board it may request a review of the audit by the ~~bureau~~ Bureau. The time limitation for final settlement payment to producers will be stayed until ten days after such review is completed and the distributor has received notice of the ~~b~~Bureau's decision.

(d) Within ten days after the distributor receives notice of the ~~b~~Bureau's decision it may file written application for appearance before the Board ~~department~~ at its ~~offices in Helena, Montana~~ to review the decision of the ~~b~~Bureau. The time limitation on final settlement payment to producers will be further stayed until review by the ~~b~~Board ~~department~~ is completed. After such a review, the Board ~~department~~ will make official findings and conclusions and order, to be effective upon the issuance thereof.

(12) All milk and its component quantities of skim milk and butterfat sold by a producer or a producer marketing organization which is required to be reported pursuant to ARM 32.24.512 will be classified by the Board ~~department~~ pursuant to 81-23-101, MCA, for the purpose of establishing compliance with minimum producer prices fixed by applicable rule of the ~~b~~Board, to-wit:

(a) Class I milk shall include, in addition to that specified in 81-23-101, MCA, shrinkage in excess of 2% of current producer receipts and plant overages.

(b) Class II milk will be classified as specified in 81-23-101, MCA.

© Class III milk shall include, in addition to that specified in 81-23-101; MCA, skim milk dumped, plant loss or shrinkage of 2% or less of current producer receipts and bulk inventories of fluid milk products.

(13) A distributor may reject milk provided by a producer because of inferior quality or noncompliance with the lawful rules of duly constituted health or sanitation agencies. In all cases the rejection of the milk must be supported by a statement to the producer setting forth the reason(s) for which the milk was rejected. A distributor shall mail a copy of the statement to the department.

(14) Except for persistent repetition of the cases set forth in (13) of this rule, no producer's contract or purchasing agreement, whether express or implied, may be terminated by a distributor except for cause after notice and hearing by the ~~department~~ Board in accordance with the rules and procedures prescribed by the Montana Administrative Procedure Act.

(15) No producer may terminate his contract or selling agreement with any distributor except by giving at least 30 days' WRITTEN notice to the distributor and to the department **Board** of his intention to terminate. However, nothing in this rule prevents a distributor and a producer from providing by WRITTEN contract or agreement for a shorter or longer period of notice. **Termination does not preempt a distributor's obligation to pay** If the producer must be paid in full by the 15th day of the month following the month of such termination.

(16) If any provision of this chapter, or the application of this chapter to any person or circumstance shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

History: Sec. [81-23-104](#) MCA; IMP , Sec. [81-23-103](#), [81-23-402](#) MCA; NEW , 1993 MAR p. 3016, Eff. 12/24/93; AMD , 1996 MAR p. 455, Eff. 2/9/96; TRANS , from Commerce, 1996 MAR p. 456.

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	2/9/1996	Current	History: Sec. 81-23-104 MCA; <u>IMP</u> , Sec. 81-23-103 , 81-23-402 MCA; <u>NEW</u> , 1993 MAR p. 3016, Eff. 12/24/93; <u>AMD</u> , 1996 MAR p. 455, Eff. 2/9/96; <u>TRANS</u> , from Commerce, 1996 MAR p. 456.

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32.23.201 REGULATION OF UNFAIR TRADE PRACTICES

(1) Under authority delegated by the provisions of [81-23-104](#) , MCA, the following transactions of business among licensees under the Milk Control Act and among licensees and the general public are declared to be unfair trade practices subject to enforcement sanctions provided by statute, to-wit:

(a) The payment of a lesser price than the applicable producer price established by the **bB**Board pursuant to the act by any distributor to any producer for milk which is distributed to any person, including agencies of the federal, state or local government.

(2) This rule and the rescission herein of any previously existing rule shall not affect any act or thing done or begun, liability incurred, or any right accrued or established or any penalty incurred or any such prosecution or proceeding, civil or criminal, pending or instituted under or on account of any such previous rule herein rescinded in whole or in part, to enforce any right or penalty or to punish any offense under the authority of any such previously existing rule, at the time this rule takes effect, but as to all such acts, things, liabilities, rights, penalties, prosecutions or

proceedings and any such previously existing rule shall remain in full force and effect.

(3) It is the intention of the **Board** department that if any provision of the rule, or the application of such provision to any person or circumstance shall be held invalid, the remainder of this rule, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(4) Nothing contained in this rule shall be construed as requiring or authorizing the violation of any order, rule or regulation lawfully issued by any federal office having proper jurisdiction.

History: Sec. [81-23-104](#) MCA; [IMP](#) , Sec. [81-23-103](#) MCA; Eff. 2/5/76; [AMD](#) , 1982 MAR p. 1741, Eff. 10/1/82; [AMD](#) , 1983 MAR p. 1817, Eff. 12/16/83; [AMD](#) , 1989 MAR p. 1196, Eff. 8/18/89; [AMD](#) , 1996 MAR p. 455, Eff. 2/9/96; [TRANS](#) , from Commerce, 1996 MAR p. 456.

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MAR Notices	Effective From	Effective To	History Notes
	2/9/1996	Current	History: Sec. 81-23-104 MCA; IMP , Sec. 81-23-103 MCA; Eff. 2/5/76; AMD , 1982 MAR p. 1741, Eff. 10/1/82; AMD , 1983 MAR p. 1817, Eff. 12/16/83; AMD , 1989 MAR p. 1196, Eff. 8/18/89; AMD , 1996 MAR p. 455, Eff. 2/9/96; TRANS , from Commerce, 1996 MAR p. 456.

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32.23.301 LICENSEE ASSESSMENTS

(1) Pursuant to [81-23-202](#) , MCA, the following assessments for the purpose of deriving funds to administer and enforce the Milk Control Act during the current fiscal year beginning July 1 and ending June 30, are hereby levied upon the Milk Control Act licensees of this department.

(a) A fee of \$0.06 per hundredweight on the total volume of all milk subject to the Milk Control Act produced and sold by a producer-distributor.

(b) A fee of \$0.06 per hundredweight on the total volume of all milk subject to the Milk Control Act sold in this state by a distributor home based in another state. Said fee is to be paid either by the foreign distributor or his jobber who imports such milk for sale within this state.

(c) A fee of \$0.025 per hundredweight on the total volume of all milk subject to the Milk Control Act sold by a producer.

(d) A fee of \$0.025 per hundredweight on the total volume of milk subject to the Milk Control Act sold by a distributor, excepting that which is sold to another distributor.

(e) A fee of \$0.155 per hundredweight per month, with a minimum of \$50.00 per month, whichever is greater, or a maximum of \$1,050.00 per month, on the volume of all classes of milk produced and sold by a person licensed by the department, to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department.

(i) This fee, pursuant to [81-23-202](#) (4) (a) , MCA, must be paid quarterly before January 15, April 15, July 15, and October 15 **for the prior quarter** of each year.

History: [81-23-104](#), [81-23-202](#), MCA; [IMP](#) , [81-23-103](#), [81-23-202](#), MCA; Eff. 7/1/75; [TRANS](#) , Eff. 1/4/76; [AMD](#) , Eff. 7/1/76; [AMD](#) , Eff. 7/5/77; [AMD](#) , 1982 MAR p. 1479, Eff. 7/30/82; [AMD](#) , 1983 MAR p. 499, Eff. 5/13/83; [AMD](#) , 1984 MAR p. 501, Eff. 3/30/84; [AMD](#) , 1985 MAR p. 273, Eff. 3/29/85; [AMD](#) , 1986 MAR p. 452, Eff. 3/28/86; [AMD](#) , 1987 MAR p. 310, Eff. 3/27/87; [AMD](#) , 1988 MAR p. 712, Eff. 4/15/88; [AMD](#) , 1989 MAR p. 396, Eff. 3/31/89; [AMD](#) , 1990 MAR p. 820, Eff. 4/27/90; [AMD](#) , 1991 MAR p. 441, Eff. 7/1/91; [AMD](#) , 1993 MAR p. 400, Eff. 3/26/93; [AMD](#) , 1995 MAR p. 534, Eff. 7/1/95; [TRANS](#) , from Commerce, 1996 MAR p. 456; [AMD](#) , 2003 MAR p. 1289, Eff. 6/27/03; [AMD](#) , 2003 MAR p. 2439, Eff. 10/31/03; [AMD](#) , 2004 MAR p. 2817, Eff. 11/19/04; [AMD](#) , 2005 MAR p. 2254, Eff. 11/11/05.

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	11/11/2005	Current	History: 81-23-104 , 81-23-202 , MCA; IMP , 81-23-103 , 81-23-202 , MCA; Eff. 7/1/75; TRANS , Eff. 1/4/76; AMD , Eff. 7/1/76; AMD , Eff. 7/5/77; AMD , 1982 MAR p. 1479, Eff. 7/30/82; AMD , 1983 MAR p. 499, Eff. 5/13/83; AMD , 1984 MAR p. 501, Eff. 3/30/84; AMD , 1985 MAR p. 273, Eff. 3/29/85; AMD , 1986 MAR p. 452, Eff. 3/28/86; AMD , 1987 MAR p. 310, Eff. 3/27/87; AMD , 1988 MAR p. 712, Eff. 4/15/88; AMD , 1989 MAR p. 396, Eff. 3/31/89; AMD , 1990 MAR p. 820, Eff. 4/27/90; AMD , 1991 MAR p. 441, Eff. 7/1/91; AMD , 1993 MAR p. 400, Eff. 3/26/93; AMD , 1995 MAR p. 534, Eff. 7/1/95; TRANS , from Commerce, 1996 MAR p. 456; AMD , 2003 MAR p. 1289, Eff. 6/27/03; AMD , 2003 MAR p. 2439, Eff. 10/31/03; AMD , 2004 MAR p. 2817, Eff. 11/19/04; AMD , 2005 MAR p. 2254, Eff.

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